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IN THE

Supreme Court of the United States

October Term, 1944

No. 691

RAILWAY MAIL ASSOCIATION,

Appellant,

against

EDWARD S. CORSI, as Industrial Commissioner of the State of New York, and NATHANIEL L. GOLDSTEIN, as Attorney General of the State of New York.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW YORK.

MOTION AND BRIEF FOR THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE AS *AMICUS CURIAE*.

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LEON A. RANSOM,
Counsel for the National Association for the Advancement of Colored People.

EDWARD R. DUDLEY,
Of Counsel.

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ON APPEAL FROM THE SUPREME COURT OF THE STATE OF NEW YORK.

MOTION FOR LEAVE TO FILE BRIEF AS *AMICUS CURIAE.*

To the Honorable, The Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The undersigned, as counsel for and on behalf of the National Association for the Advancement of Colored People, respectfully move that this Honorable Court grant them leave to file the accompanying brief as *Amicus Curiae.*

The National Association for the Advancement of Colored People is a membership organization which has for the past thirty-five years continuously advocated full citizenship rights for all American citizens. This Association has dedicated itself to work for the achievement of

functioning democracy and equal justice under the Constitution and laws of the United States.

As will more fully appear in the accompanying brief, this Court is here asked to decide whether a section in the New York Civil Rights Law which forbids denial of membership in any labor organization to any person by reason of his race, color or creed is applicable to a labor organization composed of members employed by the United States and engaged in the Postal Service. The question is essentially whether the Constitution and laws of the United States forbid a State from enacting such a law applicable to and regulating equally the conduct of any labor organization operating within the State, regardless of whether the said organization is composed of employees of the United States, the State or private employers.

It is to present written argument on this issue, fundamental to the good order and economic security of the community, that this motion is filed.

The Attorney General of New York, on behalf of both appellees, has consented to the filing of this brief. Counsel for appellants has been requested but has refused to consent to the filing of this brief.

WILLIAM H. HASTIE,
THURGOOD MARSHALL,
LEON A. RANSOM,
Counsel for the National Association for the Advancement of Colored People.

EDWARD R. DUDLEY,
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BRIEF FOR THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE AS *AMICUS CURIAE*.

Opinions Below.

Statutes Involved.

The opinions below and the statutes involved are set out in full in the record and in the briefs for both parties filed herein.

Question Presented.

The question presented by this Appeal and to which this brief is addressed is:

Is the Statute of the State of New York (Civil Rights Law, Section 43, enacted L. 1940, C.9) which forbids a labor

organization, including the appellant association, from denying membership in such organization by reason of race, color or creed unconstitutional?

Statement of the Case.

The appellant herein is a foreign corporation organized under the laws of the State of New Hampshire. Through subordinate local units functioning in different parts of the State of New York it carries on the business of the corporation as set out in its charter, viz., "to conduct the business of a fraternal beneficiary association for the sole benefit of its members and beneficiaries and not for profit; to promote closer social relationship among railway postal clerks; to better enable them to perfect any movement that may be for their benefit as a class or for the benefit of the Railway Mail Service, * * *".

Membership in the Association is limited by its Constitution to "any regular male railway postal clerk or male substitute postal clerk of the United States Railway Mail Service who is of the Caucasian race or native American Indian." Section 43 of the New York Civil Rights Law provides in part that, "no labor organization shall hereafter, directly or indirectly * * * deny person or persons membership in its organization by reason of his race, color, or creed * * *.

Appellant brought an action for a declaratory judgment seeking to have the Court hold that Sections 41, 43 and 4[illegible] of the Civil Rights Law of the State of New York and the provisions of the labor law do not apply to appellant and that the Railway Mail Association is not a labor organization within the meaning and contemplation of said laws. Appellant also asked the Court to declare "that if sought to be applied to the appellant therein, such laws are in contravention to the Constitution of the Unied States."

The appellees, the Industrial Commissioner of the State of New York and the Attorney General of the State of New York, deny appellant's allegation that it is not a labor organization within the meaning of Section 43 of the New York Civil Rights Laws, and the Court of Appeals held that appellant is in fact and law a labor organization within the meaning of said statute.

ARGUMENT.

I.

Analysis of Appellant's Claim of Unconstitutionality.

So much of the claim of the appellant as is founded upon constitutional grounds asserts in essence that the application of Section 43 of the New York Civil Rights Law to appellant is made pursuant to arbitrary and unreasonable classification, and at the same time is an unwarranted invasion of an area of Federal jurisdiction and control. The latter contention cannot mean that a private organization, particularly a foreign corporation, functioning within a State is beyond reach of the police power of that State because its members are employees of the United States. To be even colorable, any argument of interference with a federal function in such a case as this must purport to show that in attempting to promote its own soverign interests the State is actually or potentially impeding the nation's business or overriding national authority.

To test this contention it becomes necessary to examine the occasion for and the effect of the legislation in question. Such examination will reveal that the application of Section 43 to appellant does not interfere with any Federal function and at the same time that it is predicated upon reasonable classification. Thus, both branches of the argument of un-

constitutionality become untenable in the light of an exposition of the social and economic basis and effect of Section 43.

II.

Social and Economic Effects of Union Discrimination.

Throughout the history of American organized labor the exclusion of Negroes from labor unions has promoted strife between white and colored workmen and operated as a disturbing factor of major importance in industry and commerce. Resultant disorders have been so frequent and so serious as to constitute a substantial menace to the general security.

As early as 1855, in the State of New York, when white longshoremen who monopolized the port of New York were called out on strike, unorganized Negroes were called in as strikebreakers. Disorder and rioting were the results.[1] This is not an isolated case. The sequence of certain unions excluding Negroes, white workmen striking, unorganized and embittered Negro strikebreakers replacing the whites, and then serious racial strife, has been a familiar pattern in American industrial life for almost a century.[2]

The great Knights of Labor strike of 1886,[3] the national steel strike of 1919 broken by some 40,000 unorganized

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[1] Wesley, Negro Labor in the United States (1927) 79-80.

[2] See Cayton and Mitchell, Black Workers and the New Unions (1939); Franklin, The Negro Labor Unionist in New York (1934); Northrup, Organized Labor and the Negro (1944); Reid, Negro Membership in American Labor Unions (1930); Spero and Harris, The Black Worker (1931); Wesley, *op cit. supra* note 1.

[3] See Northrup, *op cit. supra* note 2, at 78.

Negro workmen,[4] the continuing racial strife over railroad employment,[5] the scandalous spectacle of our present war effort being impeded by the failure of unions to accept Negro workers are but the most sensational manifestations of a grave social and economic evil.

The total social effect of such events recurring in community after community is hurtful beyond measure. As one commentator has put it:

> "Aside from availability in strikes, the employment of Negro labor is used to intimidate the white workers and to serve as a threat that should they give up their jobs they may find them filled by the colored workers. The exclusion of Negroes from the white unions has aided the employers' purpose, since the more Negroes he can intermingle in the plant the fewer are the possibilities of complete union organization.
>
> "One of the deplorable results of this opportunism on the part of the Negro is to breed animosity between white and colored workers, which, along with other types of irritations, becomes the tinder to set alight some spark of friction into a roaring flame of race hatred. The grave social tragedy which sometimes results from such a situation is described in a report of the conditions arising in connection with a strike in Chicago, from which the following excerpt is taken:
>
> "'It was natural that the strikers outside, whose children were hungry, who saw their desire thwarted to build on monthly payments a home for themselves, should find a strong feeling growing against those who, perhaps all unconsciously, were lowering, not raising, the standard of living of the

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[4] See passim Commission of Inquiry, Interchurch World Movement, Report on Steel Strike of 1919 (1920).

[5] See Northrup, *op cit. supra* note 2, Ch. 3.

community. A new prejudice was developed against the strike-breaker, whether he was Greek or colored, who was a commodity of labor hauled and delivered from one labor battlefield to another. These immigrant workers took at his human value the colored worker who joined the union, or who worked by their side and was a pleasant person. But the colored strike-breaker was a different creature.' "[6]

The 1924 Convention of the National Association for the Advancement of Colored People expressed the general alarm of thoughtful persons with reference to this critical situation in the following open letter "to the American Federation of Labor and other groups of organized labor":[7]

"For many years the American Negro has been demanding admittance to the ranks of union labor.

"For many years your organizations have made public profession of your interest in Negro labor, of your desire to have it unionized, and of your hatred of the black 'scab.'

"Notwithstanding this apparent surface agreement, Negro labor in the main is outside the ranks of organized labor, and the reason is, first, that white union labor does not want black labor, and secondly, black labor has ceased to beg admission to union ranks because of its increasing value and efficiency outside the unions.

"We face a crisis in inter-racial labor conditions; the continued and determined race prejudice of white labor, together with the limitation of immigration, is giving black labor tremendous advantage. The Negro is entering the ranks of semi-skilled and skilled labor and he is entering mainly and necessarily as a 'scab.' He broke the great steel strike. He will

[6] See Feldman, Racial Factors in American Industry (1931), at 33.

[7] Quoted in Spero and Harris, *op. cit. supra* note 2, at 144.

soon be in a position to break any strike when he can gain economic advantage for himself.

"On the other hand, intelligent Negroes know full well that a blow at organized labor is a blow at all labor, that black labor today profits by the blood and sweat of labor leaders in the past who have fought oppression and monopoly by organization. If there is built up in America a great black bloc of non-union laborers who have a right to hate the unions, all laborers, black and white, eventually must suffer.

"Is it not time then that black and white labor get together? Is it not time for white unions to stop bluffing and for black laborers to stop cutting off their noses to spite their faces?"

The State of New York has experienced its full share of the evil consequences of racism in labor organization. From the already cited waterfront strike of 1855 to the Ward Line strike of 1895, racial clashes arising out of union exclusion kept New York in intermittent turmoil. Rioting, violent death and large scale property destruction were the recurrent fruits of divisive and discriminatory union practices. This sorry chapter of New York history is briefly summarized in the most frequently cited treatise on American Negro labor:

"The Negro came into longshore work in the North before the Civil War. He was brought in for the most part as a strike breaker or as an instrument to divide and weaken white workers. His use for such purposes was so extensive that his presence came generally to be resented, even when his employment was altogether innocent of anti-organization designs. This resentment was frequently so bitter as to result in riot and bloodshed. Such a riot broke out in New York in 1855 when Negroes were used to break a water front strike. The situation was re-

peated in Buffalo in the summer of 1863 when the boss stevedores tried to fill the places of former white workers with Negroes and provoked a serious fight in which twelve black men were badly beaten, while one was killed in the fighting and two were drowned. The predominant longshore group of the day was the Irish, who were then seldom employed at anything but the cheapest common labor and, accordingly, resented competition in new and better kinds of work in which they were just gaining a foothold. Riots almost as serious as that in Buffalo were reported in Chicago, Detroit, Cleveland, Albany, New York, Brooklyn, and Boston when Negro strike breakers, brought in to take the places of Irish strikers, were greeted by floods of bricks, stones, and broken bottles. During the spring of 1863 rioting between the two races along the New York water front was frequent, and injury and death often resulted.

"In June of that year, shortly before the trouble in Buffalo, three thousand Irish longshoremen in New York lost a strike for higher wages largely because of the introduction of black labor under police protection. A month later these defeated Irish longshoremen led the draft riots in an attempt to resist forced military service in behalf of Negroes whom they feared and hated as their industrial rivals.

"Despite indications and the fears of the Irish, the Negro failed to gain a prominent place in longshore work at this time. In fact, his role along the water front in New York and the North generally became less and less important, while the Irish held their own. They continued to dominate the trade down to 1887 when the shipping companies in New York turned to Italians to break the 'big strike,' led by the Knights of Labor. Several lines also used Negro strike breakers on this occasion, but let most of them go when their old men returned. Six years later, in an extensive strike in Brooklyn, Italians and Negroes brought from the South were again used as strike breakers, but it was the former, who had been

becoming an increasingly important factor in the industry for the past six years, who really broke the strike. Fights and brawls between the Irish strikers and Italian scabs took place all along the water front. At times the situation became so serious as to require the calling of police reserves. Soon the strike took on an interracial aspect and became a fight against the Italians. Every Italian who came near the water front, even though he had nothing whatever to do with the strike, was in danger of attack. The fruit vendors and peanut men who used to ply their trades along the docks dared not show themselves. In one instance, according to the newspapers, an Irishman who was mistaken for an Italian 'because he wore a sloven hat' was chased for blocks and pounded before he could explain. Apparently, it is not the Negroes alone who have suffered as a group because some of its members have taken the places of men on strike."[8]

More recently, following the disastrous Harlem race riot of March 19, 1935, the Mayor's Commission on Conditions in Harlem as well as private agencies undertook to survey the condition of Negro labor in New York. One of the results of this effort was a definitive study by Charles L. Franklin, published in book form in 1936 and entitled "The Negro Labor Unionist in New York." While noting a numerical increase in Negro unionists in Manhattan from 1,385 in 1910 to 39,574 in 1935, and a corresponding spread in occupational distribution, Dr. Franklin concludes his historical and analytical study with this statement:

"The foregoing facts and conclusions warrant two further conclusions—of a more general nature. First, the labor union situation in Manhattan as it affects Negroes is similar to that in the United States as a whole. In Manhattan there is represented every type of labor union relation, practice and policy in

[8] *Id.* at 179-199.

regard to Negro workers, as was found by investigators (mentioned in the preface) to exist in the United States. It has already been pointed out above that these practices vary from acceptance of Negro workers into membership on an equal basis with white workers, as in the International Ladies' Garment Workers' Union, to a complete exclusion of Negro workers by constitutional provision as in the Masters, Mates and Pilots of America, the railroad Brotherhoods and others. Between those two extremes are the unions that put Negro workers in separate locals or in auxiliary bodies responsible to white unions, those that neither discourage nor encourage Negro workers to join their ranks and those organized independently by Negro workers. Just as the absence of membership or limitations on full membership of Negroes in unions over the entire United States produced the net result of their not being able to gain a prominent position in the industrial life of the American people, so did the same conditions in Manhattan prevent Negro workers there from gaining a desirable place in the local labor movement and industrial life. Lack of organization has deprived them of the means whereby they could maintain proper standards of living and assure themselves of sufficient power to combat low wages, deplorable working conditions, unjust discrimination and, in general, all forms of injustice. However, although there is this similarity between Manhattan conditions and national conditions, there is some difference in degree. In Manhattan conditions are not quite so serious as in the United States as a whole."[9]

Another measure of the social consequences of racial discrimination by unions controlling large areas of employment is to be found in the disproportionately large part of the burden of public relief represented by indigent Negroes

[9] See Franklin, *op. cit. supra* note 2, at 266.

unable to find work. In the State of New York, according to the Unemployment Census of 1937, Negroes constituting 3.3 per cent. of the population, constituted 9.4 per cent. of the unemployed. Out of 320,826 Negroes of employable age, 91,071 were unemployed.[10] To remedy such a condition becomes one of the most serious responsibilities of the State.

The enactment of Section 43 was recommended to the New York Legislature by the New York State Temporary Commission on the Condition of the Colored Urban Population in its Report of February, 1939.[11] The Report fully confirmed and amplified the earlier private findings as to the widespread existence and hurtful consequences of union discrimination. The following excerpt is particularly noteworthy:

> "Collective bargaining may be considered in one aspect a private agreement between an employer and his employees concerning only the interests of those responsible for the agreement. In another sense, however, such an agreement becomes a broader matter and one concerning the general public interest, for it involves not only wage levels for the persons in question and the standard of living of a portion of the community, but also, in the case of a closed shop, even the work opportunities available to those who are not participants in the agreement." * * *
>
> "That many unions are guilty of such unfair practices especially toward the Negro group, is a matter of proven fact. It is openly admitted, even by trade-union leaders, that a considerable number of international unions exclude Negroes from membership and privileges, either by provision in the international constitution, or by practices in the

[10] Compiled from United States Census of Partial Employment, Unemployment and Occupations, 1937.

[11] Published by the State as Legislative Document (1939) No. 69.

ritual of initiation, or by tacit understanding among their officers." * * *

"The Commission has no complete figure showing the New York State membership of these unions, but it is sufficiently large and numerous to exercise an important influence on the policies of organized labor toward Negro membership." * * *

"Refusal of membership to Negroes has been reported in many building trade-union locals, where again no constitutional bar to Negro membership exists and where discrimination is accomplished solely on the authority of local officials. Only a strong revolt on the part of the liberal members of the painters' union of New York City broke down a discriminatory policy which has been practiced toward the Negro painters of the city." * * *

"It is with these considerations in mind that the Commission has recommended legislation designed in some measure to protect workers of minority groups from unfair discrimination by labor unions." [12]

III.

Reasonableness of Section 43 and Its Application to Appellant.

It is in this setting and in the light of this history that the enactment of Section 43 of the Civil Rights Law in 1940 must be considered. Experience had shown clearly that the avoidance of strife between white and Negro workers and their partisans, the assurance of greater employment opportunities for Negroes and the utilization of the full productive capacity of the community were important social objectives to which the State must address itself. Legislation prohibiting labor union discrimination offered one obvious approach.

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[12] *Id.* at 45, 46, 47.

The problem existed with reference to all types of employment within the State. It was not restricted to enterprise of exclusively local character or to unions of employees working for private persons. Economic and social dislocation, local disorders and the impoverishment of minority groups resulted as much from practices of unions whose members were engaged in interstate commerce or employed by government as from the practices of any other unions. Indeed, the most recent responsible study of union racial practices shows such unions among the most serious offenders:

"At least fourteen American unions specifically exclude Negroes from membership by provisions to that effect in either their constitutions or their rituals. . . .

"To summarize the above in tabular form:

"I. Union which exclude Negroes by provision in ritual:

Machinists, International Association of (AFL)

II. Unions which exclude Negroes by provision in constitution:

A. AFL Affiliates

Airline Pilots' Association
Masters, Mates and Pilots, National Organization
Railroad Telegraphers, Order of *Railway Mail Association* (italics added)
Switchmen's Union of North America
Wire Weavers' Protective Association, American

B. Unaffiliated Organizations

Locomotive Engineers, Brotherhood of
Locomotive Firemen and Enginemen, Brotherhood of
Railroad Yardmasters of America
Railroad Yardmasters of North America

Railway Conductors, Order of
Train Dispatchers' Association, American.[13]

It is noteworthy in this connection that although appellant denies being a "labor organization" it has voluntarily become an "affiliate" of the American Federation of Labor. Its activity in the field of labor relations, as conventionally defined, is noted in the opinion of the Court of Appeals in the present litigation, and the finding of that court as to the character of the appellant as a "labor organization" within the meaning of the New York statute should be deemed conclusive on this appeal. Moreover, it is stipulated in the Record that "any Appellate Court may consider as exhibits offered by defendants

* * * 'The Black Worker' * * * by * * * Spero and * * * Harris * * * quotations from pages 67-69" (R. 11, 13). The following significant excerpt is from the evidence thus introduced in this case:

> "It appears from the following resolution, adopted by the Illinois branch of the Railway Mail Association, protesting against the appointment of a Negro clerk-in-charge at the Terminal Railway Post Office in Chicago, that the 'high mortality rate among Negro Members' was only a pretext for excluding others in the future:
>
> "Whereas, a colored clerk has been appointed in the Chicago, Illinois, Terminal R. P. O., and
>
> "Whereas, said clerk-in-charge has direct supervision over thirty-three clerks of Caucasian birth; and
>
> "Whereas, this does not create harmonious relations between clerks and clerks-in-charge, nor would it in any other case similar in character, nor can the best interests of the service be obtained under such condition; and
>
> "Whereas, we believe that no colored clerk-in-charge can supervise the work of clerks of Caucasian

[13] See Northrup, *op. cit. supra* note 3, at 2, 3-4.

birth to best advantage, nor to the best welfare of the employees, therefore be it

"Resolved, That the Illinois Branch Sixth Division R. M. A., in regular session assembled vigorously protest this assignment or any future assignment of a (Negro) clerk-in-charge who will have direct supervision over a crew any of whom are of Caucasian birth.

"This branch was not unique in its stand. Other branches protested similar appointments."

Thus the appellant is revealed not only to be functioning as a traditional labor organization, but also to be employing its representative authority and power to induce the officers of the Postal Service to discriminate against Negroes.

In such circumstances the legitimate and important public purpose of Section 43 can be achieved only by requiring appellant to obey its mandate. Appellant's voluntary acts have made such application of Section 43 both reasonable and necessary. Indeed, any exception in favor of appellant would be arbitrary and unreasonable.

IV.

Trend of Legislation and Adjudication in Other States as Additional Indicia of Reasonableness.

While not in themselves decisive of the Constitutional issues raised by appellant, recent legislation and judicial decisions in states other than New York comprehensively striking down arbitrary discrimination in membership by labor unions, strongly indicate that Section 43 is in line with enlightened judgment throughout the nation as to the social

dangers of union discrimination and the propriety and reasonableness of its prohibition by state action.[14]

Chapter 265 of the Kansas Acts of 1941 forbids labor organizations which exclude persons from membership because of race or color from acting as a collective bargaining representative in that state. Chapter 96 of the Nebraska Acts of 1941 approaches the problem somewhat differently by prohibiting representatives of labor from racial discrimination in collective bargaining. Pennsylvania, by force of Chapter 294 of the Acts of 1937, denies the protection of the State Labor Relations Act to all unions which restrict membership because of race, creed or color. Chapter 57 of the Wisconsin Laws of 1939 requires the termination of any closed shop agreement if the union arbitrarily restricts membership.

Several State courts have considered it a proper exercise of judicial power to restrain arbitrary discrimination in union membership which has damaged a complainant, even without legislative declaration of policy. The most recent and carefully reasoned of these decisions, *James* v. *Marinship Corporation*, S. F. No. 17,015, was decided by the Supreme Court of California in January, 1945, but has not yet been officially reported. Summarizing the views of other State courts and indicating its own, the California court there said:

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[14] Federal policy indicates the same trend in responsible official judgment. By express provision of Executive Order Number 9346, dated May 27, 1943, the President has prohibited "labor organizations" in "war industries" from discrimination in "union membership because of race, creed, color of national origin." During the 78th and 79th Congresses committees of both Houses reported favorably on legislaton prohibiting union discrimination which burdens interstate commerce. See Senate Report No. 1109, 78th Congress, *2nd Session*, and House Report No. 187, 79th Congress, *1st Session*.

"Some courts have held that state legislation is necessary in order to announce a public policy restricting a union's right to arbitrarily exclude individuals from membership although as a result thereof excluded persons are unable to find employment in their chosen trade. (See for example, Miller v. Ruehl, 166 Misc. 479, 2 N. Y. S. 2d 894; Murphy v. Higgins, 12 N. Y. S. 2d 913.) As said hereinbefore, however, other authorities have indicated that the courts without statutory aid, may restrain such conduct by a union on the ground that it is tortious and contrary to public policy. Further, as said in 4 Restatement, Torts, page 136, comment on section 794: 'The expression of public policy is not confined to legislation and criminal law; in passing upon the propriety of an object (of concerted labor action), public policy otherwise defined is an important factor. If the object is an act against which the law has definitely set its face, it is not a proper object of concerted action.' "

The New Jersey Chancellor, in *Cameron* v. *International Alliance of Theatrical Stage Employees*,[15] enjoined the enenforcement of union rules, arbitrarily discriminatory against certain members. The Maryland Court of Appeals, in *Lucke* v. *Clothing Cutters Assembly*,[16] approved an award of substantial damages to a worker arbitrarily denied admission to a union with the consequence that he lost his job. An Ohio decree, in *Wills* v. *Local No. 106*,[17] restrained a union from picketing for the discharge of Negro employees whose applications for union membership it had arbitrarily rejected. The American Law Institute, in its Restatement

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[15] 118 N. J. Eq. 11, 176 Atl. 692 (1935) *cert. denied*, 298 U. S. 659.

[16] 77 Md. 396, 26 Atl. 505 (1893).

[17] 26 Ohio N. P. (N. S.) 435.

of the Law of Torts, Section 810, has found the law to be that "workers who in concert procure the dismissal of an employee because he is not a member of a labor union . . . are . . . liable to the employee if, but only if, he desires to be a member of the labor union but membership is not open to him on reasonable terms."

The underlying concept of public policy upon which courts have proceeded in this entire line of decisions has recently been stated by the New Jersey Chancellor in *Carroll* v. *Local No. 269*:[18]

> "A voluntary union should be one in which a law-abiding individual of good moral character, possessing the essential qualifications of his trade, can enter upon compliance with rules and by-laws reasonably appropriate for the stability and usefulness of the association. Autocracy is no less inimical to our American ideals if practiced by many rather than by one. Since 1890 we have regarded labor unions as voluntary associations. Let them in reality continue to be such."

As the urgent need for governmental restraint of racial discrimination by labor unions thus impresses itself upon increasing numbers of State courts and legislatures, the burden on those who deny that this is a proper State function becomes heavier.

V.

Relation of Section 43 to Federal Authority.

It cannot rationally be argued that employees of the Postal Service are "federal instrumentalities," and certainly it cannot be argued that appellant, a private cor-

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[18] 31 Atl. (2d) 223, 225 (N. J. 1943).

poration, with entity distinct from its members, is such an instrumentality. Yet, it appears to be appellant's contention that any regulation of its conduct is an unconstitutional interference with a Federal function. But this argument would also strike down State income taxation in its application to salaries of postal employees, or local traffic regulations in their application to postal employees, or State insurance laws in so far as they might affect mutual companies insuring postal employees.

The answer to appellant's contention is to be found in the settled principle that "the exercise by the State of its police power, which would be valid, if not superseded by Federal action, is superseded only where the repugnance or conflict is so 'direct and positive' that the two acts cannot 'be reconciled or consistently stand together' ", as restated with extended review of earlier authorities by Mr. Chief Justice HUGHES in *Kelly* v. *Washington*,[19] This Court has recently applied that principle in *Allen-Bradley Local, etc.* v. *Wisconsin Employment Relations Board*,[20] to a Wisconsin regulation of labor disputes admittedly within the area of Federal control under the National Labor Relations Act, reasoning that since state and federal regulations "as focused in this case can stand together, the order of the state Board must be sustained under the rule which has long obtained in this court."

The application of Section 43 to appellant in this case, far from impeding any exercise of federal authority, implements federal policy and requirements as declared by the

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[19] 302 U. S. 1, 10 (1937).

[20] 315 U. S. 740, 751 (1941). Cf. *Carpenters and Joiners Union* v. *Ritters Cafe*, 315 U. S. 722 (1941); *Milkwagon Drivers Union* v. *Meadowmoor Dairies*, 312 U. S. 287 (1940).

President in Executive Order Number 9346, dated May 27, 1943:

> "I do hereby reaffirm the policy of the United States that there shall be no discrimination in the employment of any person in war industries *or in Government* by reason of race, creed, color, or national origin, and I do hereby declare that it is *the duty of all employers, including the several Federal departments and agencies, and all labor organizations*, in furtherance of this policy and of this Order, *to eliminate discrimination* in regard to hire, tenure terms or conditions of employment, *or union membership* because of race, creed, color, or national origin." (Italics added.)

That such policy of the national sovereign is a matter not of discretion, but rather of constitutional necessity is an implicit premise of this Court's decision at the present Term in *Steele* v. *Louisville & Nashville Ry. Co.*,[21] and expressly stated in the concurring opinion of Mr. Justice MURPHY:

> "The Constitution voices its disapproval whenever economic discrimination is applied under authority of law against any race, creed or color. A sound democracy cannot allow such discrimination to go unchallenged. Racism is far too virulent today to permit the slightest refusal in the light of a Constitution that abhors it, to expose and condemn it wherever it appears in the course of a statutory interpretation."[22]

In such circumstances there can be not even semblance of conflict between the state and the United States as a result of the application of Section 43 to appellant.

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[21] 65 Sup. Ct. 226 (1944).

[22] *Id.* at 235.

Conclusion.

Appellant's contention that its Constitutional rights have been infringed is groundless. The appeal should be dismissed.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES.

No. 691.—October Term, 1944.

Railway Mail Association, Appellant,
vs.
Edward S. Corsi, as Industrial Commissioner of the State of New York, et al.

Appeal from the Supreme Court of the State of New York.

[June 18, 1945.]

Mr. Justice Reed delivered the opinion of the Court.

The appellant, Railway Mail Association, questioned the validity of Section 43, and related Sections 41 and 45, of the New York Civil Rights Law which provide, under penalty against its officers and members, that no labor organization shall deny a person membership by reason of race, color or creed, or deny to any of its members, by reason of race, color or creed, equal treatment in the designation of its members for employment, promotion or dismissal by an employer.[1] Appellant contended that it was not a "labor organization" subject to these sections, and that if

[1] Section 43 of the New York Civil Rights Law, N. Y. Consol. Laws, ch. 6, provides:

"As used in this section, the term 'labor organization' means any organization which exists and is constituted for the purpose, in whole or in part, of collective bargaining, or of dealing with employers concerning grievances, terms or conditions of employment, or of other mutual aid or protection. No labor organization shall, hereafter, directly or indirectly, by ritualistic practice, constitutional or by-law prescription, by tacit agreement among its members, or otherwise, deny a person or persons membership in its organization by reason of his race, color or creed, or by regulations, practice or otherwise, deny to any of its members, by reason of race, color or creed, equal treatment with all other members in any designation of members to any employer for employment, promotion or dismissal by such employer."

Section 41 of the law, prescribing the penalties for violations of Section 43, provides:

". . . any officer or member of a labor organization, as defined by section forty-three of this chapter, or any person representing any organization or acting in its behalf who shall violate any of the provisions of section forty-three of this chapter or who shall aid or incite the violation of any of the provisions of such section shall for each and every violation thereof be liable to a penalty of not less than one hundred dollars nor more than five hundred dollars, to be recovered by the person aggrieved thereby . . . and such officer or member of a labor organization or person acting in his behalf, as the case may be shall, also, for every such offense be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one

they were held to apply to it, they violated the due process and equal protection clauses of the Fourteenth Amendment of the federal Constitution and were in conflict with the federal power over post offices and post roads. Article I, Section 8, Clause 7, of the federal Constitution. The New York Court of Appeals rejected these contentions.[2] On appeal to this Court, consideration of the question of jurisdiction was postponed to the hearing on the merits for determination of whether the case presented a "case or controversy" within the meaning of the federal Constitution. The jurisdiction of this Court rests on Section 237(a) of the Judicial Code.

The appellant, Railway Mail Association, a New Hampshire corporation, is an organization with a membership of some 22,000 regular and substitute postal clerks of the United States Railway Mail Service. It has division and branch associations, thirteen of such branch associations being located in different parts of New York. Article III of appellant's constitution limits membership in the association to eligible postal clerks, who are of the Caucasian race, or native American Indians.[3] Certain officers and members of one of appellant's branch associations raised the question of the validity of Article III of appellant's constitution with the appellee, the Industrial Commissioner of the State of New York, who was charged with enforcement of Section 43. Faced with the threat of enforcement of the statute against it, the appellant filed suit against the Industrial Commissioner in a state court for a declaratory judgment to determine the validity of Section 43, and related provisions, and for an injunction restraining its enforcement against the appellant. A state Supreme

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hundred dollars nor more than five hundred dollars, or shall be imprisoned not less than thirty days nor more than ninety days, or both such fine and imprisonment."

Section 45 of the same law provides:

"The industrial commissioner may enforce the provisions of sections forty-three . . . of this chapter. For this purpose he may use the powers of administration, investigation, inquiry, subpoena, and hearing vested in him by the labor law; he may require submission at regular intervals or otherwise of information, records and reports pertinent to discriminatory practices in industries."

[2] Railway Mail Association v. Corsi, 293 N. Y. 315.

[3] Constitution, Railway Mail Association, 1941-43, Article III, provides:

"Any regular male Railway Postal Clerk or male substitute Railway Postal Clerk of the United States Railway Mail Service, who is of the Caucasian race, or a native American Indian, shall be eligible to membership in the Railway Mail Association."

Court entered judgment for the appellant finding that it was not a "labor organization" as defined in Section 43 of the state statute.[4] On appeal to the Appellate Division, this judgment was reversed, the appellate court finding that appellant was covered by Section 43 and that Section 43 as applied to appellant did not violate the federal Constitution.[5]

On appeal to the New York Court of Appeals, the judgment against the appellant was affirmed. The Court of Appeals noted that appellant's constitution provided that one of the objects of the association was to enable railway postal clerks "to perfect any movement that may be for their benefit as a class or for the benefit of the Railway Mail Service. . . . .";[6] that the Industrial Secretary of the Association[7] was to assist in the presentation of grievances pertaining to service conditions and endeavor to secure adjustment of such through administrative action.[8] It was pointed out that appellant was affiliated with the American Federation of Labor and that the appellant was designated a "labor union" in the Bulletin of the United States Department of Labor as well as in various trade union publications and reports. Appellant's own publications claimed credit for bringing "to every railway postal clerk many material benefits" and "many additional millions of dollars brought to the pockets of railway postal clerks each year by the efforts of the Association," and pointed out that "Reforms always come as a result of demands from the worker. If better conditions are worth securing, they must come as result of organized effort."[9] In the light of this evidence, the Court of Appeals held appellant to be a "labor organization" as defined in Section 43. As heretofore stated, it rejected appellant's con-

[4] Railway Mail Association v. Murphy, 180 Misc. 868.

[5] Railway Mail Association v. Corsi, 267 App. Div. 470.

[6] Constitution, Railway Mail Association, 1941-43, Article II, provides:

"The object of this Association is to conduct the business of a fraternal beneficiary association for the sole benefit of its members and beneficiaries, and not for profit; to provide closer social relations among railway postal clerks, to enable them to perfect any movement that may be for their benefit as a class or for the benefit of the Railway Mail Service and make provision for the payment of benefits to its members and their beneficiaries in case of death, temporary or permanent physical disability as a result of accidental means."

[7] The Industrial Secretary also has a duty under appellant's constitution, Article VII, Section 3(4), to represent members before the United States Employees' Compensation Commission.

[8] *Ibid.*, Article VII, Section 3(3).

[9] Railway Mail Association v. Corsi, 293 N. Y. 315, 320.

tentions that the statute, as applied to it, violated the federal Constitution.

Prior to consideration of the issues, it is necessary to determine whether appeal from this state court declaratory judgment proceeding presents a justiciable "case or controversy" under Sections 1 and 2 of Article III of the federal Constitution. We are of the opinion that it does. The conflicting contentions of the parties in this case as to the validity of the state statute present a real, substantial controversy between parties having adverse legal interests, a dispute definite and concrete, not hypothetical or abstract. Legal rights asserted by appellant are threatened with imminent invasion by appellees and will be directly affected to a specific and substantial degree by decision of the questions of law.[10] *Nashville, C. & St. L. Ry.* v. *Wallace*, 288 U. S. 249, 261-62. See *Aetna Life Ins. Co.* v. *Haworth*, 300 U. S. 227, 242; *Currin* v. *Wallace*, 306 U. S. 1, 9; *Gibbs* v. *Buck*, 307 U. S. 66, 76-77; *Maryland Casualty Co.* v. *Pacific Coal & Oil Co.*, 312 U. S. 270, 272-73; *Tennessee Coal Co.* v. *Muscoda Local*, 321 U. S. 590, 592. Cf. *Pierce* v. *Society of Sisters*, 268 U. S. 510.

Appellant first contends that Section 43[11] and related Sections 41 and 45 of the New York Civil Rights Law, as applied to appellant offends the due process clause of the Fourteenth Amendment as an interference with its right of selection to membership and abridgment of its property rights and liberty of contract. We have here a prohibition of discrimination in membership or union services on account of race, creed or color. A judicial determination that such legislation violated the Fourteenth Amendment would be a distortion of the policy manifested in that amendment which was adopted to prevent state legislation designed to perpetuate discrimination on the basis of race or color. We see no constitutional basis for the contention that a state cannot protect workers from exclusion solely on the basis of race, color or creed by an organization, functioning under the protection of

[10] One of the appellant's branch associations attempted to admit into its membership persons not of the Caucasian race. Appellant denied such applicant's membership whereupon state officials charged with the enforcement of Section 43, on complaint by certain interested parties, asserted the applicability of that law to appellant; the invalidity of Article III of appellant's constitution and prepared to invoke substantial statutory penalties for failure to comply with Section 43. Appellant asserts the invalidity of the statute and is faced with either violating its own constitution or a state statute.

[11] See note 1, *supra*.

the state, which holds itself out to represent the general business needs of employees.[12]

To deny a fellow-employee membership because of race, color or creed may operate to prevent that employee from having any part in the determination of labor policies to be promoted and adopted in the industry and deprive him of all means of protection from unfair treatment arising out of the fact that the terms imposed by a dominant union apply to all employees, whether union members or not. In their very nature, racial and religious minorities are likely to be so small in number in any particular industry as to be unable to form an effective organization for securing settlement of their grievances and consideration of their group aims with respect to conditions of employment. The fact that the employer is the Government has no significance from this point of view.[13]

Appellant's second ground for attack on the validity of Section 43, and related provisions, is that equal protection of the laws is denied to it by the section. Appellant rests its argument on the fact that Article 20 of the New York Labor Law,[14] conferring certain rights on employees and labor organizations with respect to organization and collective bargaining, excludes from the operations of its provisions labor organizations, such as the appellant, whose members are "employees of the state,"[15] while Section 43 includes the appellant in the definition of "labor organizations" subject to its provisions.[16] Appellant thus contends that the state could not classify appellant so as to be subject to Section 43 and deny it the benefits of the provisions of Article 20; that the state's failure to extend Article 20 to include the appellant denies it equal protection. A state does not deny equal protection because it regulates the membership of appellant but fails to extend to organizations of government employees provisions relating to collective bargaining. Under customary practices government employees do not bargain collectively with their em-

[12] See Steele *v.* Louisville & N. R. Co., 323 U. S. 192; Tunstall *v.* Brotherhood of Locomotive Firemen, 323 U. S. 210; Thomas *v.* Collins, 323 U. S. 516, 532.

[13] See 5 U. S. C. § 652, 37 Stat. 555; discussed *infra*, p. 7.

[14] New York State Labor Relations Act. N. Y. Consol. Laws, Ch. 31, Art. 20, §§ 700-716. This statute creates a state labor relation board and contains provisions in aid of employee's rights to organize and bargain collectively with their employers.

[15] N. Y. Consol. Laws, ch. 31, § 715.

[16] See note 1, *supra*.

ployer. The state may well have thought that the problems arising in connection with private employer-employee relationship made collective bargaining legislation more urgent and compelling than for government employees. Cf. *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 46.

There remains to be considered the appellant's third contention: that Section 43, and related provisions, are repugnant to Article I, Section 8, Clause 7, of the federal Constitution which confers on Congress the authority over postal matters; that Section 43 constitutes an invasion of this field over which Congress has exclusive jurisdiction and constitutes an attempt to regulate a federal instrumentality. Government immunity from state tax and regulatory provisions does not extend beyond the federal government itself and its governmental functions. In the regulation of its internal affairs, the state inevitably imposes some burdens on those dealing with the national government of the same kinds as those imposed on others. *Penn Dairies* v. *Milk Control Commission*, 318 U. S. 261, 270. Section 43 does not impinge on the federal mail service or the power of the government to conduct it. It does not burden the government in its selection of its employees or in its relations with them. Nor does it operate to define the terms of that federal employment or relate to any aspect of it. Section 43 is confined in its application to a purely private organization deriving no financial or other statutory support or recognition from the federal government and which in no way acts as an instrumentality of the federal government in performance of its postal functions. The operation of the mails is no more affected by this statute than by a state law requiring annual meetings, or the election of officers by secret ballot, or by a state insurance regulation applicable to appellant's fraternal benefit activities. The decided cases which indicate the limits of state regulatory power in relation to the federal mail service involve situations where state regulation involved a direct, physical interference with federal activities under the postal power or some direct, immediate burden on the performance of the postal functions. *Johnson* v. *Maryland*, 254 U. S. 51, 57; *Price* v. *Pennsylvania Railroad Co.*, 113 U. S. 218, 222; *Martin* v. *Pittsburg & Lake Erie R. R.*, 203 U. S. 284, 292-93. See *Ex parte Jackson*, 96 U. S. 727, 732; *In re Rapier*, 143 U. S. 110, 133. And in at least one instance this Court has sustained direct state interference with transmission of the mails where the slight public inconvenience arising therefrom was felt to be far outweighed by inconvenience

to a state in the enforcement of its laws which would have resulted from a contrary holding. *United States* v. *Kirby*, 7 Wall. 482, 486.

Appellant also argues that the various federal statutes regulating the terms and conditions of employment of railway mail clerks indicates an intent on the part of Congress to completely occupy the field of regulation applicable to federal postal employees and their labor organizations.[17] Especial reliance is placed on Section 652, Title 5, U. S. C., 37 Stat. 555, which provides that "Membership in any . . . organization of postal employees not affiliated with any outside organization imposing an obligation or duty upon them to engage in any strike, or proposing to assist them in any strike, against the United States, having for its objects, among other things, improvements in the condition of labor of its members, including hours of labor and compensation therefor and leave of absence . . . or the presenting by any such person or groups of persons of any grievance or grievances to the Congress . . . shall not constitute or be cause for reduction in rank or compensation or removal . . . from said service." The language of this provision indicates that it had the narrow purpose of prohibiting discrimination against a federal employee because of membership in an organization of employees which did not impose an obligation to strike against the government. This provision can hardly be deemed to indicate an intent on the part of Congress to enter and completely absorb the field of regulation of organizations of federal employees. Congress must clearly manifest an intention to regulate for itself activities of its employees, which are apart from their governmental duties, before the police power of the state is powerless. *Allen-Bradley Local* v. *Wisconsin Employment Relations Board*, 315 U. S. 740, 749, and cases cited. There is no such clear manifestation of Congressional intent to exclude in this case. Nor are we called upon to consider whether Congress, in the exercise of its power over the post offices and post roads, could regulate the appellant organization. Suffice it to say, that we do not find it to have exercised such power so far and thus regulation by the states is not precluded.

The judgment is

Affirmed.

Mr. Justice RUTLEDGE concurs in the result.

[17] 39 U. S. C. §§ 601-640.

The Railway Mail Association is a union of railway clerks. To operate as a union in New York it must obey the New York Civil Rights Law. That law prohibits such an organization from denying membership in the union by reason of race, color or creed, with all the economic consequences that such denial entails.

Apart from other objections, which are too unsubstantial to require consideration, it is urged that the Due Process Clause of the Fourteenth Amendment precludes the State of New York from prohibiting racial and religious discrimination against those seeking employment. Elaborately to argue against this contention is to dignify a claim devoid of constitutional substance. Of course a State may leave abstention from such discriminations to the conscience of individuals. On the other hand, a State may choose to put its authority behind one of the cherished aims of American feeling by forbidding indulgence in racial or religious prejudice to another's hurt. To use the Fourteenth Amendment as a sword against such State power would stultify that Amendment. Certainly the insistence by individuals on their private prejudices as to race, color or creed, in relations like those now before us, ought not to have a higher constitutional sanction than the determination of a State to extend the area of non-discrimination beyond that which the Constitution itself exacts.